IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 677 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PASABHAI KACHARABHAI BHOI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 677 of 2001

MR FB BRAHMBHATT for Petitioner No. 1

MR PATEL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/01/2002

ORAL JUDGEMENT

The petitioner seeks indulgence of this Court by praying for a writ, order or direction, directing respondents Nos. 2 and 3 to register offence under

Section 302 IPC against Kanubhai Mohabbatsinh Darbar and to make proper investigation into the matter and/or to transfer the investigation by directing respondent No.4 to some independent agency.

2. The grievance sought to be ventilated by the petitioner in this petition is that despite his complaint about missing of his younger brother alongwith money drawn from the Bank and suspected involvement of Kanubhai Mohabbatsinh Darbar in the offence, the investigating agency has not taken any action.

3. The learned Additional Public Prosecutor Mr. Patel states on instructions that the Police has investigated into the matter and has filed summary "A" because the dead-body which was found cannot be said to be of brother of the petitioner. The Police has recorded statements of various witnesses and the suspect was subjected to a lie-detector test also, but nothing adverse to him has been found and therefore, a report in form of summary "A" was filed before JMFC, Dholka, which has been accepted by learned JMFC by order dated 3.10.2001 on condition that the investigating agency will continue the investigation. In this view of the matter, the relief sought for by the petitioner cannot be granted. Even otherwise, the direction sought for in paragraph 14(B) of registering offence under Sec. 302 IPC against Kanubhai Mohabbatsinh Darbar cannot be granted as it would depend upon the outcome of the investigation. The investigation has been made and summary "A" is sought. The petition therefore cannot be entertained and the same is therefore dismissed. Rule is discharged with no order as to costs.

(A.L.Dave, J.)

*/Mohandas